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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Indonesia: Government unwilling to genuinely protect freedom of expression

1. Despite the existence of constitutional and other legal provisions, protection for the right to freedom of expression remains weak in Indonesia. This is largely due to the government's inconsistency in applying the law, as well as a lack of police regulations and policy on dealing with citizens expressing their right. At the same time, the government has also enacted some controversial regulations that can potentially be used to restrict freedom of expression: a) Law No. 7 of 2012 on Social Conflict Intervention, which allows local government to easily request the military to tackle public chaos, demonstrations, and labor strikes that can potentially harm social harmony and economic development; b) Intelligence Law No. 17 of 2011, which allows intelligence agencies to conduct wiretapping without effective and strong external oversight; c) Law No. 11 of 2008, on Electronic Information and Transactions, which has been used to restrict expression on social media.

2. According to the Commission for Disappearances and Victims of Violence (KontraS), a prominent Indonesian NGO, 162 cases of extreme restriction against the right to freedom of expression occurred between January and December 2014. One of the most common forms of such restriction is the forced dissolution of public discussions and movie screenings.

3. The Asian Legal Resource Centre (ALRC) would like to raise particular concerns regarding Law No. 11 of 2008, on Electronic Information and Transactions, which provides for criminal charges against citizens for offending others. The past three years have hence seen many cases of criminal charges against Internet users in Indonesia. The infamous 2012 defamation case against Alexander Aan in Padang, West Sumatera Province, was only the beginning, with Aan being arrested and prosecuted for questioning Prophet Muhammad on Facebook. More recently, in August 2014, Ms. Florence Sihombing faced criminal prosecution for stating on her private social network path, "Yogyakarta people poor, stupid, and uncultured." This was leaked to public social media including Facebook and Twitter, and Sihombing was subsequently reported to local police.

4. Another similar case is that of Mr. Muhammad Arsyad, who was arrested in October 2014 by police officers because his Facebook posts offended current President Joko Widodo. Although Arsyad was released due to public pressure and widespread media coverage, the criminal charges against him are a clear indicator that under President Widodo's administration, the right to freedom of expression remains restricted.

5. In its concluding observations on the initial report of Indonesia's compliance with the International Covenant on Civil and Political Rights on 21 August 2013, the UN Human Rights Committee stated that Indonesia should "consider revising its defamation law and, in particular, the Law on information and electronic transactions, to ensure that they are in compliance with article 19 of the Covenant." Additionally, violations against the right to freedom of expression and speech in Indonesia were one of the serious issues examined by the Human Rights Committee session on Indonesia in August 2013. Among the various recommendations made by the Committee to ensure the protection and fulfillment of the right to freedom of expression and speech, was that "the State party should take the necessary steps to ensure that any restrictions to the freedom of expression comply fully with the strict requirements of article 19, paragraph 3, of the Covenant, as further clarified in general comment No. 34."

6. The right to freedom of expression is also particularly violated for journalists and indigenous communities. KontraS has reported 72 cases of violence against journalists in 2013, such as murder, brutal attacks, and denial of access to information, while the Indonesian Journalist Alliance (AJI) documented 37 cases of violence against journalists between 2014 and 2015. Eleven of these 37 cases involve police officers. According to the AJI, the government has failed to prosecute the perpetrators.

7. Indigenous communities in Indonesia are also victims of the denial of freedom of expression and assembly, due to their peaceful protests against land confiscations. Details of such suppression of indigenous communities are provided in ALRC's submission on the right to freedom of assembly and association in Indonesia titled, "Right to freedom of assembly and association acknowledged, but not protected".

8. The province of Papua faces extreme restrictions on the right to freedom of expression. Between 2004 and 2014, human rights groups have documented 67 cases of Papuans charged with treason for their political expression. The punishment for treason is life imprisonment or a maximum term of 20 years. Most recently, five Papuans have been charged with treason on 14 April 2015 after meeting with the Minister of Defense, Retired General Ryamizard Ryacudu. In a separate submission to the Human Rights Council on the right to freedom of assembly, the ALRC has provided further cases of violations against Papuans. More recently, President Widodo granted amnesty to five Papuan prisoners detained since 2003; they have now been released.

9. Indonesia has no effective mechanism to provide redress for the violation or restriction of the right to freedom of expression. Although Law No. 13 of 2006, on Victims and Witness Protection, regulates remedies for victims, it does not acknowledge the right of victims implicated in fabricated cases, as found in many instances of freedom of expression violations. Furthermore, as the police themselves play a large role in violating citizens' right to freedom of expression, there is little room for obtaining remedies or justice. Indonesian NGOs like KontraS and Indonesia Legal Aid Foundation (YLBHI) have frequently reported such cases to the National Commission on Human Rights (Komnas HAM), to no avail.

10. Given the above situation regarding freedom of expression in Indonesia, the ALRC requests the Human Rights Council to take up the following with the Indonesian government:

a. Provisions relating to defamation should be repealed in various laws, such as the Indonesian Penal Code and Law No. 11 of 2008 on Electronic Information and Transactions;

b. The right to freedom of expression must be unequivocally recognized and protected, and all those violating the right must be held accountable regardless of rank, institution, and background;

c. Patterns of extreme restrictions on the right to freedom of expression in Papua and West Papua should be ended, and a willingness to peacefully and comprehensively solve problems there must be demonstrated.